

ESTTA Tracking number: **ESTTA570751**Filing date: **11/13/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Oculus VR, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	19800 MacArthur Blvd. Suite 450 Irvine, CA 92612 UNITED STATES		

Attorney information	Jonathan Pearce SoCal IP Law Group LLP 310 N. Westlake Blvd., Suite 120 Westlake Village, CA 91364 UNITED STATES uspto@socalip.com, jpearce@socalip.com, alamonaco@socalip.com Phone:(805) 230-1350
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**Registration Subject to Cancellation**

Registration No	3960289	Registration date	05/17/2011
International Registration No.	NONE	International Registration Date	NONE
Registrant	Oculus Info Inc. 2 Berkeley Street Toronto, CAX M5A4J5 CAX		

**Goods/Services Subject to Cancellation**

Class 009. First Use: 2001/10/00 First Use In Commerce: 2001/10/00 All goods and services in the class are cancelled, namely: Computer software for use by commercialanalysts and government intelligence analysts for data visualization applications; all of the foregoing goods exclude computer hardware and software used in the field of computer information securityand privacy for keeping information displayed on computer monitors visually secure and private
Class 042. First Use: 2001/10/00 First Use In Commerce: 2001/10/00 All goods and services in the class are cancelled, namely: Design and development of computer software; computer software consulting services; all of the foregoing services exclude the design and development of and consulting regarding computer hardware and software used in the field of computer information security and privacy for keeping information displayed on computer monitors visually secure and private

**Grounds for Cancellation**

Abandonment	Trademark Act section 14
Other	1. Non-Use See In re Letica Corp., 226 USPQ 276, 277 (TTAB 1985). 2. Partial Cancellation/

	Restriction under Lanham Act Section 18, See, e.g., Eurostar, Inc. v. #Euro-Star# Reitmoden GMBH & Co. KG., (T.T.A.B. 1994).
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Attachments	L13580 Petition to Cancel and Exhibits A-B FILED 11-13-2013.pdf(1561676 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/jonathan pearce/
Name	Jonathan Pearce
Date	11/13/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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<p>Oculus VR, Inc.</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 80px;">v.</p> <p>Oculus Info Inc.</p> <p style="padding-left: 40px;">Registrant.</p>	<p>Cancellation No.</p> <p>Registration Ser. No. 3,960,289</p>
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**PETITION TO CANCEL**

Petitioner Oculus VR, Inc. (hereinafter “OVR” or the “Petitioner”) requests that the Trademark Trial and Appeal Board cancel United States Trademark Registration No. 3,960,289 for the mark “OCULUS INFO INC.” issued to Oculus Info Inc. (the “Registrant”) on May 17, 2011 for use in connection with “computer software for use by commercial analysts and government intelligence analysts for data visualization applications; all of the foregoing goods exclude computer hardware and software used in the field of computer information security and privacy for keeping information displayed on computer monitors visually secure and private” in International Class 009 and in connection with “design and development of computer software; computer software consulting services; all of the foregoing services exclude the design and development of and consulting regarding computer hardware and software used in the field of computer information security and privacy for keeping information displayed on computer monitors visually secure and private” in International Class 042 (the “Registration”).

The grounds asserted by Petitioner are as follows:

1. The Petitioner is Oculus VR, Inc., a Delaware corporation whose principle address is 19800 MacArthur Blvd., Suite 450, Irvine, CA 92612.

2. Petitioner is the owner of trademark registration number 4,424,543 for the “OCULUS VR” mark in class 28 for goods of “Virtual reality headsets and helmets adapted for use in playing video games.”

3. Petitioner is also the owner of trademark application number 85/392,272 to register the mark OCULUS VR in class 42 for services of “Computer hardware and software design.” (the “Application”).

4. Petitioner has filed, concurrently with this petition, an amendment to the services description in application number 85/392,272 to read, “design and development of computer game hardware and software and virtual reality hardware and software.”

5. Petitioner’s Application has been refused registration by the Examining Attorney based upon an alleged likelihood of confusion with the mark in the Registration.

6. Specifically, the Examining Attorney has refused registration on the basis of likelihood of confusion on the grounds that “both parties are providing computer software design.”

7. Registrant appears to be in the business of designing and selling business visualization software that enables, for example, large data sets to be viewed in one or more graphical forms.

8. Petitioner is in the business of designing, manufacturing, and selling virtual reality hardware and software including virtual reality headsets and the hardware and software necessary to cause the virtual reality headsets to function. Petitioner’s hardware and software are used in conjunction with video games.

9. Petitioner participated in a successful “Kickstarter” campaign that resulted in the creation of its virtual reality headset, the founding of the company and a great deal of positive press regarding the virtual reality headset.

10. By refusing to register to Application, Petitioner is being damaged and will continue to be damaged.

## **COUNT ONE – NON-USE OF THE MARK**

11. Upon information and belief, and incorporating all allegations set forth above, Registrant has not used and is not currently using the mark shown in the Registration in conjunction with any of the goods and services identified in the Registration as a trademark or service mark.

12. Specifically, the Registrant's specimen, filed on July 18, 2008 along with the application shows two alleged uses of the mark.

13. The first specimen<sup>1</sup> consists of the phrase "Oculus Info Inc." appears in small print on what appears to be the first page of a user's manual for "CommandSight 4.1" software. This alleged use of the mark is merely an identification of the trade name of the Registrant, its Canadian corporate name and does not demonstrate use of the mark "Oculus Info Inc." as a trademark. (*See*, Lanham Act § 45; *see, e.g., In re Diamond Hill Farms*, 32 USPQ2d 1383 (TTAB 1994) (DIAMOND HILL FARMS, as used on containers for goods, found to be a trade name that identifies applicant as a business entity rather than a mark that identifies applicant's goods and distinguishes them from those of others)). Trade names are not registerable as trademarks. *See In re Letica Corp.*, 226 USPQ 276, 277 (TTAB 1985) ("[T]here was a clear intention by the Congress to draw a line between indicia which perform only trade name functions and indicia which perform or also perform the function of trademarks or service marks.").

14. The second specimen<sup>2</sup> consists of a whitepaper regarding the "Oculus Excel Visualizer" which uses "Oculus Info Inc." in the same manner as the first specimen as a trade name and further includes the phrase "© 2006 Oculus Info Inc." appears in tiny print at the bottom of each page. This is the trade name of the Registrant Canadian corporation in a copyright notice and not a use of the mark "Oculus Info Inc. as a service mark and is merely an identification of the trade name of the Registrant.

15. Upon a reasonable search, as of the date of this Petition, Registrant's web site [www.oculusinfo.com](http://www.oculusinfo.com) does not include a single trademark or service mark use of the mark that is

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<sup>1</sup> Attached as Exhibit A to this Petition.

<sup>2</sup> Attached as Exhibit B to this Petition.

the subject of the Registration. All uses of the phrase “Oculus Info Inc.” on the site either refer to the company’s corporate name or are copyright notices identifying the corporate entity claiming copyright ownership of portions of the site or materials appearing thereon.

16. Upon information and belief, Registrant has not used the mark that is the subject of the Registration in any way as more than a mere trade name.

17. Accordingly, Registrant has no bona fide use of the mark identified in the Registration in the U.S. As such, Registrant’s Registration should be cancelled for non-use.

### **COUNT TWO - ABANDONMENT**

18. In addition, regardless of any alleged past use of the mark, on information and belief, and incorporating all of the allegations above, the Registrant has not used the mark in commerce, or at all, in connection with any of the identified goods and services for at least the last three years. *ShutEmDown Sports Inc. v. Lacy*, 102 U.S.P.Q.2d 1036 (T.T.A.B. 2012) (more than three years of nonuse, commencing with filing date for majority of the identified goods, and no evidence rebutting prima facie showing); *Auburn Farms, Inc. v. McKee Foods Corp.*, 51 U.S.P.Q.2d 1439 (T.T.A.B. 1998). *Cf. General Motors Corp. v. Aristide & Co., Antiquaire de Marques*, 87 U.S.P.Q.2d 1179 (T.T.A.B. 2008) (plaintiff could not prove priority because it abandoned mark with no intent to resume use prior to use by defendant).

19. Registrant has abandoned the mark under 15 U.S.C. § 1127(d). As such Registrant’s Registration should be cancelled on the basis of abandonment.

### **COUNT THREE – RESTRICTION UNDER § 18**

20. In the alternative, incorporating all of the allegations above, the Registrant requests restriction of the goods and services description of Registrant’s mark (the “Proposed Restriction”) to the following (deletions shown in strikeout and additions in underline):

21. In class 009: Computer software for use by commercial analysts and government intelligence analysts for data visualization applications; all of the foregoing goods exclude computer hardware and software used in the field of computer information security and privacy for keeping information displayed on computer monitors visually secure and private and all of

the foregoing goods further exclude computer game hardware and software and virtual reality hardware and software.

22. In class 042: Design and development of computer software; computer software consulting services; all of the foregoing services exclude the design and development of and consulting regarding computer hardware and software used in the field of computer information security and privacy for keeping information displayed on computer monitors visually secure and private and all of the foregoing services further exclude the design and development of computer game software and virtual reality hardware and software.

23. Likelihood of confusion would be avoided by the Proposed Restriction because Applicant's services description is now for services of "design and development of computer game hardware and software and virtual reality hardware and software." These goods and services are explicitly excluded by the Proposed Restriction.

24. Based upon information and belief, Registrant has not used the mark that is the subject of the Registration in connection with any of the services now identified in the Application.

25. Furthermore, upon information and belief, the consumers of the goods and services of the Registrant and the Applicant are substantially different and the channels of trade associated with both parties are also substantially different. Were the Board to grant a restriction based upon the Proposed Restriction, likelihood of confusion will be avoided.

## **PRAYER FOR RELIEF**

26. WHEREFORE, Oculus VR, Inc. respectfully petitions for cancellation of registration number 3,960,289 in its entirety, or alternatively, for partial cancellation under Lanham Act § 18 limiting the goods and services to the Proposed Restriction set forth above. *See, e.g., Eurostar, Inc. v. "Euro-Star" Reitmoden GMBH & Co. KG.*, (T.T.A.B. 1994).

November 13, 2013

Respectfully submitted,

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Attorney for Petitioner  
Oculus VR, Inc.

## **CERTIFICATE OF SERVICE**

I hereby certify that Applicant was served this document on this date via first class mail to the address of record in the Registration: Anessa Owen Kramer, Honigman Miller Schwartz and Cohn LLP, 39400 Woodward Avenue, Suite 101, Bloomfield Hills, MI 48304

November 13, 2013

/s/ jonathan pearce



# **EXHIBIT A**

USER'S GUIDE

# COMMANDSIGHT 4.1

1.0

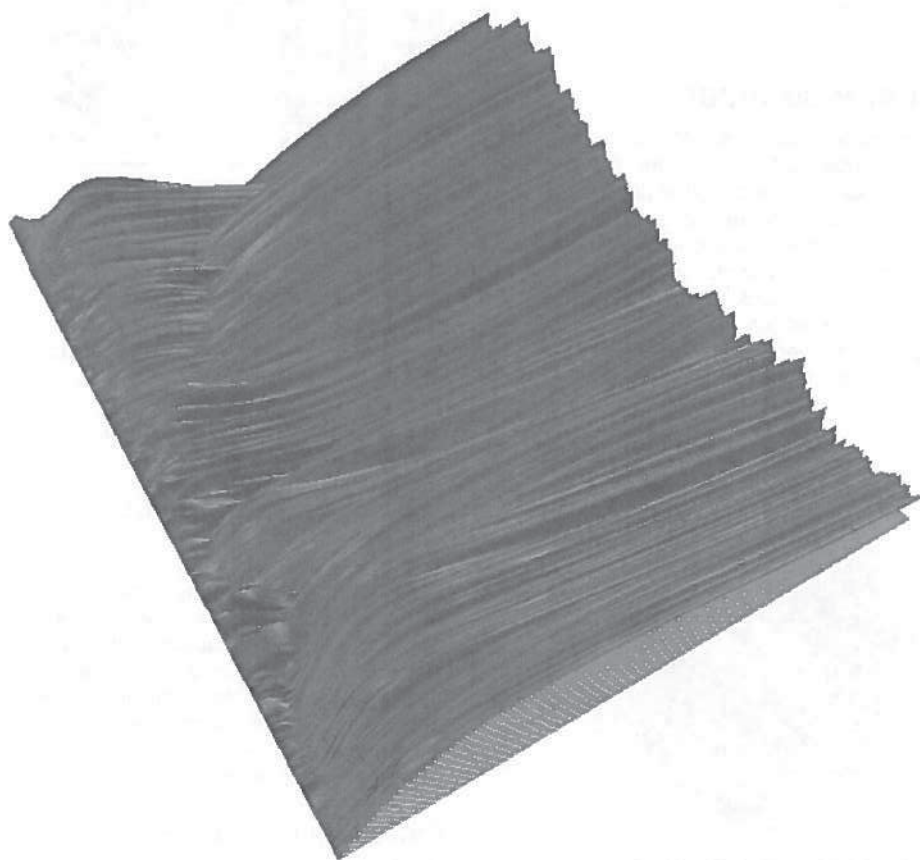
Oculus Info Inc.



# **EXHIBIT B**

# Oculus Excel Visualizer

Oculus Info Inc.



oculus

## Introduction

Oculus ([www.oculusinfo.com](http://www.oculusinfo.com)) is the leading provider of innovative business visualization software and services for Fortune 500 companies and third-party software providers. Our innovative, multi-dimensional, interactive user interfaces enable our client base to achieve far more comprehension and more rapid understanding of their complex data. This enhanced interaction offers considerable business value.

## Excel Visualizer

Oculus Excel Visualizer is a Microsoft Excel® extension designed to give users immediate understanding of the data that drives their business intelligence. By leveraging the ubiquity, power and ease-of-use provided by Excel spreadsheets, Oculus has created a new paradigm in rapid data visualization. Users can now take advantage of our integrated charting capabilities to provide new views on data to provide further insight and comprehension.

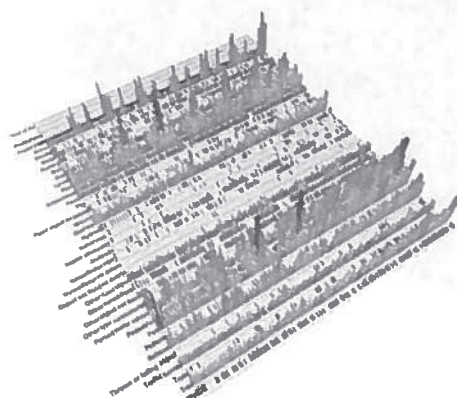


Figure 1 - Excel Visualizer highlighting peaks, strips and cyclical patterns in a spreadsheet.

## WYSI WYG Visualization

Excel Visualizer provides a WYSI WYG ("what you see is what you get") paradigm for working with Excel Spreadsheets. Non-numeric data is represented alongside quantitative data while retaining cell formatting, just as it is in your spreadsheet (Figure 2).

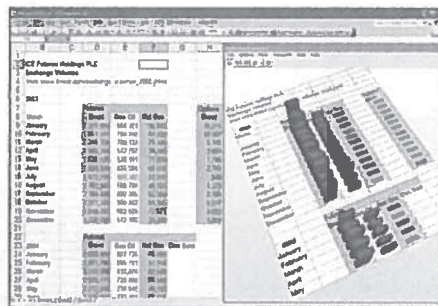


Figure 2 - Excel Visualizer depicts the spreadsheet in a 3D scene, transforming numeric values into 3D bars.

Spreadsheet users invest significant time and effort adjusting the fonts, colors, borders, and white space to enhance the readability and usability of spreadsheets. Through these formatting techniques, users leverage Gestalt principles such as proximity, similarity and ground separation to organize their information. By maintaining the formatting, these extra layers of semantic value are available to the visualization user.

Spreadsheet users typically format their data into specific data types, such as date and currency. With Excel Visualizer, there is no need for the user to adjust data types or go through a wizard. Instead, the application intelligently handles numeric values, text and missing data, allowing the user much more freedom for ad hoc visual exploration.

## Rapid Comprehension

One-click selection of cell ranges is all that is required to view your data in context, no matter how large or complex the dataset. No dialog boxes to fiddle with and no properties to tweak allows you to focus on what's important: your data.

By viewing your information in context with its surrounding text, you can intuitively associate the original data with its visual representation.

### Direct Connect to Excel

Clicking on cell in the visualization highlights the corresponding cell in your spreadsheet. Any modifications to the contents of this cell will result in the visualization instantly updating, allowing you to observe cause-and-effect relationships.



Figure 3 – Clicking a bar immediately selects the corresponding cell on the spreadsheet. Changing a value immediately updates the visualization.

### View Large Spreadsheets

Massive Excel spreadsheets can be a roadblock to understanding what is going on in your data. Basic Excel charting simply doesn't scale to the levels required by today's data-rich working environments, whether for exploratory analysis or presentation of findings. Oculus Excel Visualizer can handle thousands of cells while providing high-resolution, interactive visual representations of your information.

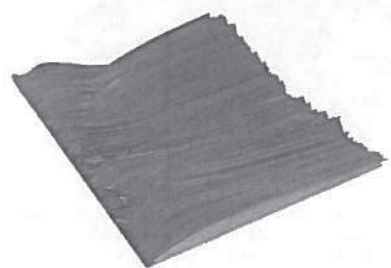


Figure 4 - 60 columns x 610 rows of data showing the difference between two financial instruments over a three year time period.

### 3D Interaction

Excel Visualizer utilizes a powerful 3D rendering engine and can graphically display large amounts of data. Excel Visualizer can display in excess of 50,000 cells simultaneously in one screen (Figure 4). This would represent more than 30 screens worth of numeric data in a typical spreadsheet view. Viewing large amounts of data at once can help the user spot trends, patterns and outliers.

The 3D graphic that is created by Excel Visualizer is fully interactive; it can be rotated, zoomed and panned, all in real-time. This provides a means to start with a high-level overview (does this data seem right at a high level?) and then zoom in to inspect finer details as required. Combined with the bi-directional synchronization with the source spreadsheet, the user can investigate individual bars and see them within the context of the overall data in the spreadsheet.

### Visual Flexibility

Excel Visualizer allows you to customize the look and feel of your visualization to meet the needs of the data. Surfaces, bars, cones, lines and ribbons are just a few of the geometric types available for use.

Different datasets lend themselves to different visual representations. For example, continuous time series data is better represented as a surface rather than a matrix of disparate bars, and percentage change is best indicated by directional cones. Furthermore, by utilizing 3D graphics techniques such as lighting, shadows, materials and translucency, the story behind your data is immediately highlighted.

### Data Annotation

The annotation of interesting results can be challenging in many visualization systems. Using the spreadsheet, the user can add annotations in adjacent cells, which then appear in the visualization.



Figure 5 - Mouse Tooltip

Data points can also be analyzed within the visualization through the use of a tooltip (Figure 5). By hovering the mouse over a point in the visualization causes an informative window outlining the value and coordinates of the cell.

## Custom Extensions

Oculus Excel Visualizer has been designed to be adapted for use in custom business data visualization applications.

Adapting Excel Visualizer to the needs of specific applications, data, users and decisions requirements can provide much more value than the generic spreadsheet view. A well designed visualization can provide a visual structure to bring together different types of metrics even if they have different scales and frequencies. A single screen can contain multiple representations, showing summaries, intermediate aggregations, and specific details. These tools also provide interaction so users can get to the data below the images, change numbers, and see the results presented graphically. Visual correlation between the drivers and inputs to the report indicate causal effects.

Extending Excel Visualizer from an Excel plug-in to a custom visualization solution has added a competitive edge to our clients' business intelligence applications. Examples of these successes include:

## QuI C

QuI C has built a scalable calculation engine that can perform very fast multidimensional calculations and deliver results to the user in a consistent landscape. It sees a growing market in credit exposure analysis and in credit derivative markets, where users need to spot credit sensitivities in their portfolios and then hone in on the exposures visually across transaction, counterparty, time step, and scenario dimensions.

Hugh Richards, vice president at QuI C, utilized Oculus' unique consulting skill set when it came to visualizing his company's data, saying "The issues of visualization are very, very important for anyone who needs to intuitively understand the landscape of risk."

Risk, trading, and treasury managers have historically been ready for visualization tools, he added. "But the calculations available at the time – such as value-at-risk (VAR), P&L, notional and other portfolio exposures – were so disjointed, that once the disparate information was put together in a multiple dimensional representation, traders and risk managers agreed that it was pretty, but far too busy to do anything for them."

"If the information is logically aligned for the consumer – the trader or risk manager – they will be able to look at it and act effectively," Richards said.

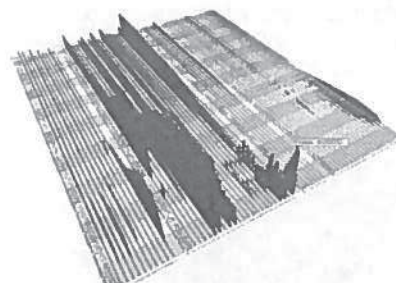


Figure 6 - Tens of thousands of data points from a QuI C CDO risk model forecasting credit exposures monthly per hundreds of transaction over 20 years.



## Multinational European Bank

Another Oculus custom visualization client is a prominent international bank with approximately \$US 500 Billion in assets. The bank's Risk Management Department identifies, quantifies and analyzes market risk, credit risk and other risks, set appropriate limits, and continually monitor these risks and limits by means of reliable and up-to-date information systems.

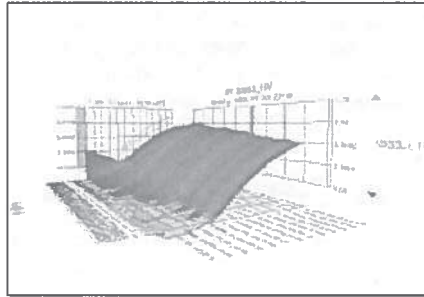


Figure 7 - Up to 200 yield curves are visible, and can be compared at the same time

To help users analyze and understand this data, Risk Department added a business visualization capability. This application is an intuitive visual presentation of market data that helps users in understanding the complex dynamics of changing risk factors; across historical data; spreads between issues, benchmarks and peers; and risk models.

The visualization system contributes to the bank's overall objectives, including helping the organization reduce risk and increase profitability by improving the quality and accessibility of its data.

## BHP Billiton

The world's largest diversified resources company, BHP Billiton has more than 100 assets and operations in 25 countries, and a market capitalization of more than \$125 billion. Its operations spread across petroleum, aluminum, diamonds, base metals, coal, carbon steel and stainless steel materials, and it has net operating cash flows of \$8.9 billion.

Through pioneering use of 3D visualization, the company has created a system which can both analyze enterprise risk models, and explain and communicate them to senior management. The 3D models show pop-up graphs, charts and maps combined onto one screen, and allow the user to input 'what if' scenarios. They provide analysis of cash flows at risk across regions and assets, and use probability distributions to build up an entire company-wide picture of portfolio value at risk.



Figure 8 - BHP Billiton

The interactive analysis of cash flow at risk models has enabled BHP Billiton to understand the entire business as a portfolio of business units and improve critical decision-making. Using visualizations, many more alternate scenarios can be explored in greater detail and more insight can be achieved than with spreadsheets or traditional reports.



## Towers Perrin (Risk Capital Management Partners LLC)

The Potential Peak Credit Exposure Model (PPE) is an Excel spreadsheet that generates credit exposures for energy contracts. The spreadsheet generates thousands of scenarios but only displays the results as a single confidence interval, only one deal at a time. It is difficult to compare alternatives.

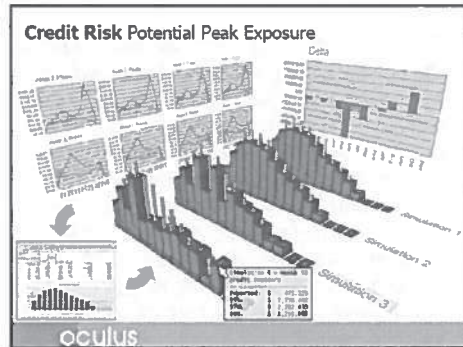


Figure 9 - Potential Peak Credit Exposure Model Visualization

The above visualization is connected directly to the spreadsheet: whenever the spreadsheet model is recomputed, a new simulation appears as a wall and as a series of stacked bars. Bars indicate exposure per month with the expected exposure (lowest bar), the 95%, 97% and 99% confidence intervals. The left wall indicates the range of market prices and hedge prices over the duration of the contract for the given simulation. Pick any two simulations and confidence interval and the right wall shows the difference between the two. Point at any bar or wall and all the numeric details are instantly accessible.

As a result, the viewer can evaluate and compare more alternatives, more quickly. With more thorough analysis better alternatives with lower risk may be found. Faster response helps win deals and frees up more time to pursue additional business.

## Oculus GeoTime

Oculus GeoTime is a new paradigm for visualization of events and relationships across geography and time within a single three-dimensional view and advanced analytical tools.

GeoTime features bi-directional Excel interaction for the visualization of entities, movements and interactions across both time and space. As data is modified in Excel, it is represented in GeoTime for full viewing and interaction. Complex spreadsheets become understandable through the use of the visualization application to reveal patterns, connections, exceptions and other subtleties.



Figure 10 - Oculus GeoTime

The visualization also includes support for diagrammatic reasoning, including node-and-link diagrams, treemaps and several other techniques for representing complex relationship data.

Oculus GeoTime has provided analysts with a way of exploring, manipulating and communicating complex spreadsheet data in previously unimaginable ways.

## Professional Services

Oculus provides services above Excel Visualizer to assist our customers achieve the maximum value from visualization. Oculus is a full service company; in addition to training and knowledge transfer, Oculus' professional services help our customers get the right visual designs to meet their business objectives and user capabilities, design application architectures to integrate within the enterprise environment and develop prototypes, pilots and production class visualizations.

Oculus also provides full visualization outsourcing, from business requirements, research, design, development and integration. Our design services begin with needs analysis and evolve the solution through an iterative design process. Our development services come with a deep understanding of visualization-specific technical issues, allowing us to implement the most efficient solution. Our toolkits are based on the latest Java and .NET technologies and are specifically designed for information visualization.

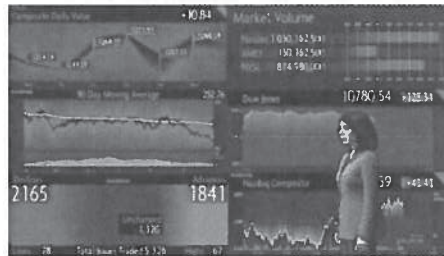


Figure 11 - NASDAQ MarketSite visualization created by Oculus

Oculus provides solutions to F500 companies, government agencies and third party software companies. Oculus clients in financial services have included:

- 3 of the top 4 US banks
- 2 of the top 4 US exchanges
- 1 of the top 2 mutual funds
- 1 of the top hedge funds
- 1 of the top 2 securities firms
- 1 of the top 2 utilities

## Conclusion

Oculus Excel Visualizer is a powerful tool for rapid exploration of spreadsheet data, combining ease-of-use with cutting-edge graphics and data integration. Excel Visualizer users gain the ability to achieve immediate insight into the data that drives your organization's business intelligence.

Oculus customers have seen that designing and implementing solutions to fit their unique requirements can be very valuable. By combining the technological capabilities of Excel Visualizer with Oculus' custom visualization services, your Excel models can be employed in a new light, resulting in enhanced productivity, understanding and communication.

## Download and Purchase

**Download:** To download and use Excel Visualizer with your own spreadsheets; an evaluation version of Excel Visualizer can be downloaded from the Oculus website at: [www.oculusinfo.com/downloads.html](http://www.oculusinfo.com/downloads.html)

**Purchase:** Excel Visualizer is available for purchase via credit card. Also available for purchase is a ½ day training course ("Introduction to Excel Visualizer") and technical support services. To purchase any of these, see the purchasing options on the Excel Visualizer download page; or contact Oculus sales at 416-203-3003.

**Extend:** To enhance and extend Excel Visualizer for a specific application requirement or to embed into another application, please contact Oculus regarding our professional services and our Oculus.NET product with Excel Visualizer framework.

## Contacts

For more information on Oculus.NET and other Oculus 3D visualization development toolkits, please email us at [info@oculusinfo.com](mailto:info@oculusinfo.com) or contact:

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Microsoft, DirectX and .NET are registered trademarks of Microsoft Inc. Excel Visualizer and Oculus.NET are trademarks of Oculus Info Inc. Other company names, brand names or product names mentioned herein may be trademarks and/or registered trademarks of their respective owners and companies.

## Appendix A: Requirements

Excel Visualizer is a high performance solution for clients seeking a solution on the following Microsoft Office and Microsoft Windows platforms:

- Microsoft Office 2003 or Office 2007
- Windows XP
- Microsoft .NET Framework 1.1
- Microsoft DirectX 9.0c, October 2005 or later

Excel Visualizer can be downloaded from [www.oculusinfo.com/downloads.html](http://www.oculusinfo.com/downloads.html)

## Appendix B: References

Windows in Financial Services, *A Consulting Firm's Excel Spreadsheets are Very Graphic*, Summer 2005, pp 43-44, Tom Groenfeldt.

*Energy Risk, Innovation of the Year – BHP Billiton*, Volume3/No7, May 2006

*BHP Investor Relations website. February 9, 2006. Portfolio Risk Management*, Jane McCarthy.  
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[http://www.dmreview.com/article\\_sub.cfm?articleID=1044210](http://www.dmreview.com/article_sub.cfm?articleID=1044210)